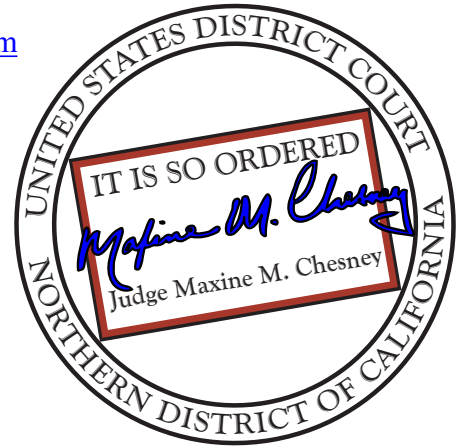


Dated: September 21, 2006

ELIZABETH A. HOWARD (SBN 173185) ehoward@orrick.com
JAN E. ELLARD (SBN 171947) jellard@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025
Telephone: 650-614-7400
Facsimile: 650-614-7401

Attorneys for Defendants,
PROTIVA BIOTHERAPEUTICS, INC. and
MARK J. MURRAY



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SIRNA THERAPEUTICS, INC.,

Plaintiff,

v.

PROTIVA BIOTHERAPEUTICS, INC. and
MARK J. MURRAY,

Defendants.

Case No. C 06-01361 MMC

**DEFENDANTS PROTIVA
BIOTHERAPEUTICS, INC.'S AND
MARK J. MURRAY'S SECOND RE-
NOTICE OF MOTION TO DISMISS
PLAINTIFF'S AMENDED
COMPLAINT PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(7), TO STAY
THIS CASE PURSUANT TO
ABSTENTION DOCTRINE, AND TO
DISMISS PLAINTIFF'S FRAUD
CLAIM PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE
12(b)(6)**

Date: November 17, 2006
Time: 9:00 a.m.
Judge: Honorable Maxine M. Chesney
Place: Courtroom 7, 19th Floor

RE-NOTICED NOTICE OF MOTION

On November 17, 2006, at 9:00 a.m. (or as soon thereafter as the matter may be heard) in Courtroom 7 of the United States District Court for the Northern District of California, defendants Protiva Biotherapeutics, Inc. ("Protiva") and Mark J. Murray ("Dr. Murray") will and hereby do move this Court to enter an Order dismissing the Amended Complaint of plaintiff Sirna Therapeutics, Inc. ("Sirna") or staying this action pending the resolution of the state court action between Protiva and Sirna following the *Colorado River* abstention doctrine. This Motion was originally noticed for October 27, 2006, and subsequently re-noticed for November 3, 2006. It is now being re-noticed to accommodate the schedule of all the parties and their counsel. This Motion is based upon this re-noticed notice of motion, and the before-filed Motion, Memorandum of Points and Authorities attached thereto and filed therewith, the Declaration of Elizabeth A. Howard, Affidavit of Dr. Mark J. Murray filed in support of the Motion, the complete files and records in this action, all matters of which the Court may take judicial notice, and any and all documentary evidence or oral argument as may be presented in conjunction with the hearing in this motion

Dismissal of the action is warranted because Sirna failed to join Protiva Biotherapeutics USA, Inc., an indispensable party that destroys diversity jurisdiction, which is the basis for this Court's subject matter jurisdiction over this matter. Further, a stay is warranted following the *Colorado River* abstention doctrine because of pending state court actions between Protiva and Sirna, and between Protiva and Inex Pharmaceuticals, Corp., involving a near identity of issues. In addition, Sirna's fraud claim should be dismissed with prejudice as Sirna failed to plead (nor can it plead) all the elements of fraud in its Amended Complaint.

Dated: September 21, 2006

Orrick, Herrington & Sutcliffe LLP

/s/ Elizabeth A. Howard

Elizabeth A. Howard
Attorneys for Defendants,
PROTIVA BIOTHERAPEUTICS, INC. and
MARK J. MURRAY